

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

October 26, 2007

In the Matter of

Robert R. Scarano

Docket No. 2003-167

DEP-05-203

File No. 344-0864

Wilmington

Final Decision

I adopt the Recommended Final Decision of the Administrative Magistrate. The applicant has failed to sustain a direct case in support of this proposal to fill bordering vegetated wetlands to meet a setback under Title 5 for the siting of a septic system. The wetlands regulations establish a presumption for soil absorption systems located at least 50 feet from the boundary of the wetland, measured from the resource area under the Wetlands Protection Act program. 310 CMR 10.03(3). The approval of the local board of health under Title 5 had been contingent on meeting this setback distance as measured under the wetlands program. I reiterate the conclusion of the Administrative Magistrate in an earlier ruling that nothing in the regulations suggests that an applicant may reconfigure a resource area before measuring the setback distance. Ruling and Order, Matter of Robert R. Scarano, Docket No. 2003-167, June 30, 2004.¹ The Department

¹ In addition to the concern noted by the Administrative Magistrate that allowing reconfiguration of wetlands prior to measuring setback distances would encourage wetlands fill, any replacement of wetlands does not take effect immediately. A replacement area is assessed after at least one growing season to ensure that it meets the criteria and warrants a certificate of compliance. See 310 CMR 10.55(4)(b);

properly revised its superseding order denying the project, consistent with the denial by the conservation commission.

Where a subsurface sewage disposal system does not qualify for the presumption at 310 CMR 10.03(3), the Department is rightly concerned not just with impacts of construction but impacts from the discharge of sewage itself from the system. 310 CMR 10.03(3). For the Department to find that a new septic system, not eligible for the presumption, “contributes to the protection of the interests of the wetlands Act,” an applicant must provide expert opinion with factual support sufficient to justify allowing a sewage discharge in closer proximity to wetland resource areas than required by the setbacks. I agree with the conclusion of the Administrative Magistrate that the applicant’s witness did not provide such support here.

The parties to this proceeding are notified of their right to file a motion for reconsideration of this Decision, pursuant to 310 CMR 1.01 (14)(d). The motion must be filed with the Docket Clerk and served on all parties within seven business days of the postmark date of this Decision. A person who has the right to seek judicial review may appeal this Decision to the Superior Court pursuant to M.G.L. c. 30A, §14(1). The complaint must be filed in the Court within thirty days of receipt of this Decision.

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

Laurie Burt
Commissioner

